

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

LEONARD COTTRELL et al., on)
behalf of themselves and all others)
similarly situated,)
Plaintiffs,) Civil Action No.: 3:14-cv-05859-BRM-
v.) LHG
ALCON LABORATORIES, INC. et)
al.,) **Return Date: November 5, 2018**
Defendants.)

)

NOTICE OF BRAND NAME DEFENDANTS' RENEWED MOTION TO
DISMISS AMENDED COMPLAINT PURSUANT TO FED. R. CIV. P.
12(b)(6) AND DEFENDANT PFIZER INC.'S RENEWED MOTION TO
STRIKE PURSUANT TO FED. R. CIV. P. 12(f)

PLEASE TAKE NOTICE that on November 5, 2018, or as soon as counsel can be heard, the undersigned counsel for Defendants Alcon Laboratories, Inc., Alcon Research, Ltd., Allergan, Inc., Allergan USA, Inc., Allergan Sales, LLC, Pfizer Inc., Valeant Pharmaceuticals International, Inc., Bausch and Lomb Incorporated, Aton Pharma, Inc., Merck & Co., Inc., and Merck, Sharp & Dohme Corp. (collectively, “Brand Name Defendants”) shall move before the Honorable Brian R. Martinotti, U.S.D.J., at the United States District Court for the District of New Jersey, Clarkson S. Fisher Building and U.S. Courthouse, 402 East State Street, Trenton, New Jersey for the entry of an Order dismissing with prejudice Plaintiffs’ Amended Class Action Complaint (Dkt. No. 84) filed in this action pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

PLEASE TAKE FURTHER NOTICE that in support of this Motion, Brand Name Defendants will rely upon the Memorandum, submitted herewith in support of this Motion, and any additional replies or submissions made hereafter. Brand Name Defendants Alcon Laboratories, Inc., Alcon Research, Ltd., Valeant Pharmaceuticals International, Inc., and Bausch and Lomb Incorporated also rely upon the Memorandum filed in support of the Generic Defendants’ Motion to Dismiss, to the extent these Brand Name Defendants also manufacture and/or distribute generic products that are at issue in Plaintiffs’ Amended Complaint.

Pursuant to Federal Rule of Civil Procedure 12(f), Brand Name Defendant Pfizer Inc. also moves to strike Plaintiffs’ addition of allegations about a generic product allegedly manufactured by Pfizer (*see* Am. Compl. ¶¶ 38, 48) because these new allegations exceed the scope of leave to amend granted by this Court.

See Dkt. No. 82 (Opinion) at 18 (granting leave to amend only “to cure the deficiencies consistent with the dictates of this Opinion”); *see also U.F.C.W. Local 56 Health and Welfare Fund v. J.D.’s Market*, 240 F.R.D. 149, 154 (D.N.J. 2007) (striking amended complaint allegations that exceeded scope of leave to amend “because to hold otherwise would be to essentially ignore Fed. R. Civ. P. 15(a) and the requirement that a plaintiff seek leave before amending its complaint”). In the event this Court permits Plaintiffs to exceed the scope of leave to amend they were granted, however, Pfizer also relies upon the Memorandum filed in support of the Generic Defendants’ Motion to Dismiss, to the extent Plaintiffs allege that Pfizer manufactures a generic product at issue in the Amended Complaint.

PLEASE TAKE FURTHER NOTICE that a proposed form of Order is submitted herewith.

Dated: August 24, 2018

Respectfully submitted,

/s/ Liza Walsh

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